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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 28 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

BHOGILAL KESHAVLAL GANDHI

Appearance:

MR BY MANKAD, Learned APP for Appellant

MR RN SHAH for Respondent No. 1-3

MR DK MODI for Respondent No. 4-5 absent

MR MD MODI for Respondent No. 4-5 absent

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 09/08/2001

ORAL JUDGEMENT

1. Heard Mr.B.Y.Mankad, learned APP for the

appellant.

2. On 4th October, 1985 the Food Inspector Shri S.S.Patel went to the firm of the accused respondent No.3 at 14:00 hours and took sample of Groundnut Oil. The same was sent to the Public Analyst for his report. The report of the Public Analyst dated 1/11/1985 shows that the sample was not in accordance with the prescribed norms, it was adulterated. Thus, by selling adulterated Groundnut Oil, the accused Nos.1, 2 and 3 committed an offence. Similarly, accused No.4 was the supplier of Groundnut Oil, therefore, he was also liable. Accused No.5 was the Manager and accordingly he was also liable. Thus, the complaint being Criminal Case No.461 of 1986 was filed by complainant - Food Inspector before the Court of J.M.F.C.Dehgam for the offence punishable under Section 7(1) read with Section 16(1) of the Prevention and Food Adulteration Act, 1954.

3. All the respondents - accused came to be acquitted by the learned Magistrate, Dehgam by his judgment and order dated 31/8/1991. One of the main and important ground of acquittal was that the Public Analyst Shri P. M. Patel who analysis the sample of the Groundnut Oil was not authorized to do so as his appointment made as Public Analyst as per the Notification dated 6/3/1984 stood automatically cancelled with the subsequent Notification dated 6/9/1985 whereby appointment of one Shri I. M. Desai was made as Public Analyst and by that notification all the previous appointments stood automatically cancelled. Thus, the day on which Shri P.M.Patel analyzed the sample, he was admittedly not authorized to analysis of the sample as a Public Analyst.

4. In that view of the matter, if the learned Magistrate has acquitted the accused of the offence, certainly after a period of nearly 16 years of the committal of the offence, no conviction can be made. Hence, this Appeal fails and dismissed.

(B.J.Shethna,J.)

(vrp)